



Although plaintiff contends that § 1442 does not authorize removal of proceedings such as this, it plainly does so. Specifically, subsection (a)(1) provides for removal of “[a] civil action . . . that is commenced in a State court and that is against or directed to . . . [t]he United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office.” 28 U.S.C. § 1442(a)(1). Russell is a person acting under an officer of the United States in his official capacity, and the subpoena relates to acts under color of his office. Subsection (d) defines “civil action” to include “any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued.” *Id.* § 1442(d).

Under well-established principles, sovereign immunity precludes the relief plaintiff seeks:

[A]n order of a state court seeking to compel a federal official to comply with a state court subpoena is an action against the United States, subject to the governmental privilege of sovereign immunity. Unless such immunity is waived, the state court lacks jurisdiction to proceed against a federal employee acting pursuant to agency direction. And because a federal court’s jurisdiction upon removal under 28 U.S.C. § 1442(a)(1) is derivative of the state court jurisdiction, the federal court can acquire no jurisdiction to enforce a state court subpoena or order upon removal.

*United States v. Williams*, 170 F.3d 431, 433 (4th Cir. 1999) (internal quotations and citations omitted) (citing, *e.g.*, *Boron Oil Co. v. Downie*, 873 F.2d 67, 70 (4th Cir. 1989)). The doctrine of sovereign immunity applies to officials of Congress acting in their official capacities. *See, e.g.*, *Rockefeller v. Bingaman*, 234 Fed. Appx. 852, 855 (10th Cir. 2007).

Here, Russell has not waived sovereign immunity. To the contrary, he expressly objected to the subpoena on this ground, among others, pursuant to House of Representatives Rule VIII

(“House Rule VIII”),<sup>3</sup> which requires that the issuance of a subpoena be “a proper exercise of jurisdiction by the court.” House Rule VIII, cl. 3; (Russell’s Obj. to Sub. (D.E. 6-1 at 9-11) ¶ 1); *see also* House Rule VIII, cl. 8 (“Nothing in this rule shall be construed to deprive, condition, or waive the constitutional or legal privileges or rights applicable or available at any time to a Member . . . or employee of the House . . . or the right of such Member . . . or employee . . . to assert such privileges or rights before a court in the United States.”). Russell also asserts sovereign immunity as a basis for his motion to quash. (Russell’s Mem. (D.E. 5) 4-6; Russell’s Reply Mem. (D.E. 11) 2-3). Notably, plaintiff appears to concede that sovereign immunity would bar the relief he seeks if the subpoena proceeding were removable under § 1442, which, as discussed, it clearly is. (Pl.’s Mem. 2 (“Mr. Russell’s arguments regarding the applicability of sovereign immunity and House Rule VIII obtain only if the Federal Court properly holds jurisdiction for removal pursuant to 28 U.S.C. § 1442.”)); *see Welch v. United States*, 409 F.3d 646, 651 (4th Cir. 2005) (holding that a party seeking relief against the federal government has the “burden to show that an unequivocal waiver of sovereign immunity exists”). The doctrine of sovereign immunity precludes this court—and, of course, the state court from which this court derives its jurisdiction in this proceeding—not only from exercising jurisdiction to compel Russell to comply with the subpoena over his objections to it, but also the authority to review and set aside the objections and the House rule pursuant to which they were made. *See Boron Oil Co.*, 873 F.2d at 70.

IT IS THEREFORE ORDERED as follows:

1. The motion by Russell to quash (D.E. 4) is ALLOWED and the subpoena is QUASHED.

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<sup>3</sup> The House Rules for the current Congress, the One Hundred Thirteenth, can be found at: <http://clerk.house.gov/legislative/house-rules.pdf>.

2. Defendant's motion to quash (D.E. 14) is DENIED AS MOOT.
3. Plaintiff's motion to compel (D.E. 9) is DENIED.<sup>4</sup>

This the 9th day of April 2013.



James E. Gates  
United States Magistrate Judge

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<sup>4</sup> See n. 2 above regarding the disposition of defendant's motion to correct the docket sheet.